

HONORABLE BENJAMIN H. SETTLE
HONORABLE MICHELLE L. PETERSON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ZANE J. KIRBY, OWEN TERHORST, ERIN
JARMON, REBECCA BRESHEARS, and
CLOE PETRICCA, individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

MCMENAMINS, INC., an Oregon Domestic
Business Corporation, and DOES 1-10,
inclusive,

Defendants.

Case No. 3:22-cv-05168-BHS-MLP

**STIPULATED MOTION AND ORDER
TO DISMISS**

STIPULATION

Pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure, Plaintiffs ZANE J. KIRBY, OWEN TERHORST, ERIN JARMON, REBECCA BRESHEARS, and CLOE PETRICCA (“Plaintiffs”) and Defendant MCMENAMINS, INC. (“Defendant”) (Plaintiffs and Defendant collectively referred to as the “Parties”) hereby stipulate as follows:

WHEREAS, the instant action was removed to this Court from Lewis County Superior Court by the Defendant on March 16, 2022;

WHEREAS, the District Judge’s Order Affirming the Magistrate Judge’s Report and Recommendation to deny Plaintiffs’ motion for class certification in this matter was entered on April 12, 2024, and accordingly, no class has been certified;

WHEREAS, the Parties have reached a settlement as to the named Plaintiffs on an individual basis only (the “Settlement”);

WHEREAS, pursuant to the terms of the Settlement, Plaintiffs now desire to dismiss this lawsuit with prejudice as to Plaintiffs’ claims and without prejudice as to the claims of the putative class or class members without notice to the class;

WHEREAS, the Parties agree that no party shall be deemed a prevailing party and no party shall be awarded fees or costs; and

WHEREAS, the Parties respectfully request that the Court enter an order consistent with this stipulation.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiffs, on the one hand, and Defendant, on the other hand, by and through their respective undersigned counsel, and subject to the Court’s approval, that:

Pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure, Plaintiffs and Defendant hereby STIPULATE AND AGREE that the instant action shall be dismissed **WITH PREJUDICE** as to the named Plaintiffs’ individual claims and dismissed **WITHOUT PREJUDICE** as to the claims of the putative class.

The Parties further STIPULATE AND AGREE that each party shall bear its own costs and

attorneys' fees.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD, DATED this 16th day of May, 2024.

ACKERMAN & TILAJEF, P.C.

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Attorneys for Defendant

Attorneys for Plaintiffs

ORDER

The Court, having received the Stipulated Motion to Dismiss, hereby orders that the Stipulated Motion is GRANTED. Pursuant to Rule 41(a)(1)(A)(ii), all claims in this matter are DISMISSED with prejudice as to each named Plaintiff and dismissed without prejudice as to the putative class. Each party shall bear its own costs and attorneys' fees.

IT IS SO ORDERED.

DATED this 17th day of May, 2024.



BENJAMIN H. SETTLE
United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system that will send notification of such filing to the following:

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Attorneys for Defendant

I further certify that I mailed a true and correct copy of the foregoing to the following non-CM/ECF participant(s): N/A

Executed on May 16, 2024 at Beverly Hills, California.

/s/Jaclyn Blackwell
Jaclyn Blackwell
Office Manager
ACKERMANN & TILAJEF, P.C.